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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JON ARNOLD WOODARD, )  
 )  
Defendant. )

Court No. 3AN-S92-5238 Cr.

FILED  
STATE OF ALASKA  
THIRD DISTRICT  
92 DEC -7 PM 3:21  
CLERK OF COURT

RESPONSE TO MOTION FOR PROTECTIVE ORDER:  
APPEARANCE OF CUSTODY (P-2)

CERTIFICATION

X This document and its attachments do not contain information that is confidential under AS 12.61.110 or the name of a victim of a crime listed in AS 12.61.140.

\_\_\_\_\_ This document or an attachment contains confidential information that may be placed in a court file under an exception listed in AS 12.61.130(b). This information appears at \_\_\_\_\_. This document and its attachments do not contain the name of a victim of a crime listed in AS 12.61.140.

COMES NOW, the State of Alaska, by and through Assistant District Attorney Mary Anne Henry and hereby responds to the defendant's motion for protective order: appearance of custody.

The defendant has filed a motion for protective order requesting certain steps be taken to avoid the appearance to the jury that he is in custody in this case. In subsections of paragraph 4 of the defendant's motion, the defendant has made specific requests as to procedures to be followed during his trial

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3 in the above entitled case. The State will respond to those  
4 requests in the order listed in those subsections.

5 In paragraph 4(a) the defendant is requesting that he be  
6 transported to the courthouse before or after the jurors are  
7 likely to arrive in the morning, and be transported from the  
8 courthouse after the jurors have left at the end of the court  
9 session. As set forth in the attached affidavit of Lt. Yakopatz,  
10 this is normal procedure, and should not be a problem. The  
11 defendant is also requesting that he be transported in an unmarked  
12 vehicle. As noted in the attached affidavit, the transport  
13 vehicles are unmarked, although they have prisoner screens and  
14 tinted windows.

15 The defendant is also requesting that he not be  
16 transported with other prisoners who are physically restrained  
17 and/or dressed in prisoner clothes. Given the number of prisoners  
18 that judicial officers need to transport each day, and given the  
19 number of vacant positions in Judicial Services, this request is  
20 unreasonable. Since Judicial Services officers will make every  
21 effort to ensure that potential jurors do not see the defendant  
22 being transported with other "obvious" prisoners, the fact that he  
23 is so transported is not prejudicial. The defendant is also  
24 requesting that at the time of transport, the vehicle be driven as  
25 close to the courthouse as possible, that he be transported as  
26 quickly as possible into the courthouse, and that the transport  
door be one other than one used by jurors and members of the

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3 public. As noted in the attached affidavit, this is normal  
4 procedure, and will certainly be followed in this case.

5 In paragraph 4(b) the defendant is requesting that he be  
6 moved to and from the holding facility in the courthouse before or  
7 after the jurors have arrived or left. Since, according to the  
8 attached affidavit, this is normal procedure, it is not  
9 anticipated that this will be a problem in this case.

10 In paragraph 4(c) the defendant is requesting that his  
11 handcuffs be removed prior to his being moved through public areas  
12 of the courthouse. Most of the defendant's movement will be  
13 through non-public areas of the courthouse, so this should not be  
14 a problem. The only "public" areas of the courthouse where he may  
15 be moved are from the van to the court building, and any movement  
16 within the courtroom itself. Any request that his handcuffs be  
17 removed prior to such movement, is a security violation, and  
18 unreasonable. Under standard procedures followed by Judicial  
19 Services officers, movement of handcuffed prisoners in these  
20 limited areas will not be seen by jurors, and therefore such  
21 movement of the defendant in handcuffs in these limited public  
22 areas is not prejudicial.

23 The defendant is also requesting that additional  
24 restraints should not be employed without prior order of the court  
25 after notice to, and hearing from, the defendant. Although  
26 Judicial Service officers will attempt to comply with this  
request, if the defendant creates a security risk, Judicial

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3 Service officers are required to take immediate action, for the  
4 protection of themselves, court officers, and the public in  
5 general.

6 In paragraph 4(d) the defendant is requesting that he be  
7 permitted to wear his own clothes from the jail to court, during  
8 court, and from the court back to the jail each day. In paragraph  
9 4(e) the defendant is requesting that he be allowed sufficient  
10 time and facilities to make himself clean and presentable prior to  
11 being transported to court. The undersigned assistant district  
12 attorney has spoken to Assistant Superintendent Epperson at Cook  
13 Inlet Pre-Trial Facility, who stated that it is standard procedure  
14 to allow the defendant sufficient time and facilities to make  
15 himself clean and presentable, and to change into his own clothes  
16 prior to being transported from the jail to court. It is  
17 therefore anticipated that there will not be a problem with this  
18 request.

19 In paragraph 4(f) the defendant is requesting "guards  
20 should remain outside of the courtroom, and out of the view of  
21 jurors at all times. He also requests that any guards permitted  
22 to be in the courtroom should be dressed in plain clothes and  
23 should assume positions which do not indicate that they are  
24 maintaining custody of the defendant. As noted in paragraph 13 of  
25 Lt. Yakopatz's affidavit, court service officers have been trained  
26 to discretely position themselves to prevent escapes or outbursts  
of violence. Therefore the request that the "guards" assume

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3 positions which should not indicate they are maintaining custody  
4 of the defendant will be followed as standard procedure. However,  
5 the defendant's request that uniformed guards remain outside of  
6 the courtroom and out of the view of the jurors at all times, and  
7 any guards in the courtroom be dressed in plain clothes is not  
8 only unreasonable but unsupported by case law.

9 The defendant notes that in State v. MacKay (a defendant  
10 charged with contracting another to commit a murder) Fairbanks  
11 Superior Court Judge Meg Greene permitted a trooper to be present  
12 in the courtroom in plain clothes in the audience section. This  
13 is clearly an aberration of normal courtroom procedure and  
14 reasonable security precautions. The defendant also cites a 1974  
15 case, Anthony v. State, 521 P.2d 486 (Alaska 1974) for the  
16 proposition that guards should remain outside the observation of  
17 the jury during trial. However, the Anthony case has been  
18 substantially limited by subsequent court decisions<sup>1</sup>. In Dunn v.  
19 State, 653 P.2d 1071 (Alaska App. 1982), the court noted at page  
20 1085:

21 Moreover, Dunn has failed to call to our  
22 attention any other cases decided since  
23 Anthony in which it has been held that the  
24 mere presence of uniformed officers in a  
25 neutral area of the courtroom, without any  
overt manifestation of actual physical  
restraint or custody, is sufficient to

26 <sup>1</sup> The defendant also cites Williams v. State, 629 P.2d 54  
(Alaska 1981). However, the decision in that case pertained to  
the testimony of a defense alibi witness while being handcuffed.  
Obviously that decision has no application to this case.

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3 deprive the defendant of a right to a fair  
4 trial.

5 The Dunn court also observed that there is persuasive authority to  
6 the contrary, citing Hardee v. Kuhlman, 581 F.2d 330 (2nd Cir.  
7 1978). In that case the court held no violation of a  
8 constitutional right to a fair trial where three significant  
9 factors existed: (1) the defendant appeared in civilian garb; (2)  
10 the jury could be expected to have been aware that the presence of  
11 uniformed officers for security purposes in a courtroom during the  
12 course of a trial is a normal occurrence, and not unusual; and (3)  
13 there was no display in Hardee's case of actual custody or  
14 unnatural precautions. (Snow v. State, 489 F.2nd 278 (10th Cir.  
15 1973); People v. Duran, (127 Cal. Rep. 618) 545 P.2d 1322 (1976).

16 In Dunn, supra, the defendant argued that Anthony  
17 equates the presence of uniformed guards within the observation of  
18 the jury as a violation of his right to a fair trial. The Dunn  
19 court specifically ruled that the defendant's reading of Anthony  
20 was over broad. The Dunn court stated at page 1086:

21 Since courtroom presence of a limited number  
22 of uniformed officers or bailiffs for  
23 security purposes during criminal and civil  
24 judicial proceedings cannot fairly be deemed  
25 an unusual occurrence - one that would be  
26 unexpected to the average juror - we do not  
think that similar, limited presence in  
public areas of the courtroom by uniformed  
guards charged with a defendant's custody can  
realistically be deemed to convey or signal  
to the jury that the defendant is in custody,  
thereby eroding his presumption of innocence.  
... We think a fair reading of Anthony would  
indicate an intent on the part of the Supreme



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3 Court to preclude the appearance before  
4 members of the jury of uniformed officers or  
5 guards who are physically restraining a  
defendant or exercising actual custody and  
control over his person. (emphasis added).

6 The court then concluded that the Dunn's right to a fair trial was  
7 not infringed by the presence of uniformed officers during the  
8 course of his trial. See also: Thomae v. State 632 P.2d 236  
9 (Alaska App. 1981) (trial judge is required to simply make sure  
10 that courtroom security does not interfere with the presumption of  
11 innocence to which a defendant is entitled); Ladd v. State, 568  
12 P.2d 960 (Alaska 1977) cert. denied 435 U.S. 928 (1978) (Anthony's  
13 language concerning the presence of uniformed guards within the  
14 view of the jury should be given a narrow, rather than a broad,  
15 interpretation)<sup>2</sup>.

16 As noted in the attached affidavit of Lt. Yakopatz, the  
17 Judicial Service office is considering requesting additional  
18 restraints in this case, given the circumstances of this offense,  
19 and the background of the defendant. The defendant has committed  
20 a series of armed robberies, one culminating in the execution of  
21 a Loomis Security Guard. These offenses included detailed  
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23 <sup>2</sup> It should be noted that during the Dunn trial two members  
24 of the Alaska State Troopers Judicial Services section were  
25 present at all times. At least one of these officers was seated  
26 in the public section of the courtroom, while one guard was placed  
in an alcove outside of the presence of the jury. At various  
times, one or both guards appeared in uniform, including service  
revolvers. Occasionally, officers did appear in plain clothes,  
whenever circumstances permitted. Given the number of prisoners  
that Judicial Services must transport each day, a requirement that  
they dress in plain clothes is ridiculous.

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3 planning before the fact, and substantial efforts to conceal the  
4 crime after the fact. The defendant, a body builder, is obviously  
5 a physically strong individual. He has exhibited unusual interest  
6 in paramilitary procedures, the use of illegal weapons (including  
7 automatic weapons and silencers), the use of false identification,  
8 and counter-surveillance techniques. He has committed extremely  
9 serious crimes, and poses a serious threat to not only potential  
10 witnesses and victims, but also co-defendants who have expressed  
11 a willingness to testify against him. Given the fact that he is  
12 facing a possible term of imprisonment in excess of 99 years, he  
13 is also an extreme flight risk. His ability to formulate specific  
14 and detailed plans before committing a crime also show his  
15 potential for a plan to escape custody. It is obvious from the  
16 circumstances surrounding the crimes he has committed and his own  
17 background, the defendant is an extreme danger to public safety  
18 and a flight risk.

19 In Contreras v. State, 767 P.2d 1169 (Alaska App. 1989)  
20 the court held that a requirement of leg shackles on the defendant  
21 covered by skirting of counsel table in the presence of the jury  
22 was not a violation of due process. The defendant was charged  
23 with a series of rapes and kidnappings, and had been convicted of  
24 four separate escapes from custody. The court noted that the  
25 trial court had "substantial discretion in acting to prevent a  
26 potential escape and to protect the safety and decorum of the  
court by shackling Contreras".



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3 In Newcomb v. State, 800 P.2d 935 (Alaska App. 1990) the  
4 defendant was accused of escaping from custody and shooting police  
5 officers who attempted to arrest him. During trial Newcomb was  
6 required to remain seated with his feet shackled and his left had  
7 cuffed to a chain around his waist. These restraints were  
8 concealed from the jury with a skirting placed around counsel  
9 table. Given these security measures, uniformed officers were not  
10 necessary, and a non-uniformed officer was stationed inside the  
11 main courtroom, within view of the jurors. In affirming the  
12 procedure followed by the trial court the Court of Appeals noted:

13 ...the information that Newcomb was in  
14 custody during trial could hardly have come  
15 as a surprise to any thinking member of his  
16 jury, no matter how Newcomb was presented in  
17 the courtroom. ... To assure basic fairness  
18 under the circumstances, the trial court was  
19 not required to undertake the wholly  
20 unrealistic task of convincing jurors that  
21 Newcomb had been released and was no longer  
22 in custody. Rather, the court was required  
23 to assure them that Newcomb was presented to  
24 the jury with an appearance of dignity and  
25 decorum in keeping with the presumption of  
26 innocence.

The court found that the procedure followed by the trial court met  
this goal of assuring that the defendant appeared to the jury with  
dignity and decorum in keeping with the presumption of innocence.

In this case the State is not requesting additional  
security at this time. The State is simply requesting normal  
security procedures be observed. These procedures, which include  
two uniformed Judicial Service officers in the courtroom in view

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3 of the jury, and the defendant unshackled, do not violate the  
4 defendant's right to be presented to the jury with an appearance  
5 of dignity and decorum in keeping with the presumption of  
6 innocence. For these reasons the State opposes any further  
7 restrictions on the Judicial Service officers, and simply requests  
8 that standard procedure be followed, including the presence of  
9 uniformed Judicial Service officers during all proceedings,  
10 including trial.

11 The defendant is also requesting that he not be seen by  
12 members of the public handcuffed or transported by Judicial  
13 Service officers. Additionally, in paragraph 5 of his motion he  
14 is requesting that he not be sketched or photographed by members  
15 of the media in handcuffs or being transported by Judicial Service  
16 officers. Assuming the standard procedures by Judicial Service  
17 officers as noted above and in the attached affidavit are  
18 followed, the extent to which members of the public or the media  
19 will make such observations are severely limited. In order to  
20 ensure a fair trial, the defendant has a right to expect that he  
21 will not be observed by jurors in his "custodial status".  
22 However, that right to a fair trial does not extend to an  
23 expectation that he will not be so observed by members of the  
24 general public and the media.

25 In his motion, the defendant cites Cannon 3An(7)(a)(iii)  
26 of the Code of Judicial Conduct in support of his request. There  
must be some typographical errors in that citation, since the

undersigned cannot find this cannon in the Code of Judicial Conduct in the Alaska Rules of Court.

The court may impose restrictions on media coverage of this case, and the restrictions that may apply in this particular case are set forth in Administrative Rule 50(e)(3) which states in pertinent part:

The court may impose reasonable restrictions on the time, place or manner of media coverage in a particular case. Any restrictions must be stated on the record, and must be reasonably related and narrowly drawn by the least restrictive means to: (i) control the conduct of proceedings before the court; (ii) ensure decorum and prevent distractions; (iii) protect the reasonable privacy interests of a minor or any other person; or (iv) ensure the fair administration of justice in pending or future cases.

Assuming that potential jurors will obey this court's admonition to avoid media coverage of this case, and to avoid discussing this case with anyone else, there does not appear to be a need to impose further restrictions on Judicial Service officers in their handling of the defendant in front of members of the public or the media. Additionally, there does not appear to be a need to impose restrictions on members of the media in sketching or photographing the defendant in a custodial situation. On the other hand, if this court deems it necessary to impose such restrictions, as noted in the attached affidavit, Judicial Service officers will make every effort to enforce those restrictions.

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For the reasons stated above, since standard procedure normally followed by Judicial Service officers in every case will be sufficient to ensure the defendant's right to a fair trial, there is no need for any order imposing additional, more restrictive, procedures.

DATED at Anchorage, Alaska, this 4<sup>th</sup> day of December, 1992.

CHARLES E. COLE  
ATTORNEY GENERAL

EDWARD E. McNALLY  
DISTRICT ATTORNEY

by:

Mary Anne Henry  
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MAH:sw

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J. McComas  
Gail Wilborn 12/7/92